No. 228

In the Supreme Court of the United States

OCTOBER TERM, 1936

THE CHIPPEWA INDIANS OF MINNESOTA, APPELLANTS

v.

THE UNITED STATES AND THE RED LAKE BAND OF CHIPPEWA INDIANS OF MINNESOTA (INTERVENORS)

ON APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statement	2
Summary of argument	8
Argument:	
I. The agreements negotiated under the Act of January 14, 1889, did not constitute appellants the beneficiaries of a trust of any lands in the diminshed Red Lake Reservation	10
A. The Indian title to the Red Lake Reservation prior to the Act of 1889 was solely in the Red Lake and Pembina bands	11
B. Neither the Act of January 14, 1889, nor the agreements negotiated thereunder, vested any title to the Red Lake Reservation in the appellants	14
C. Therefore, the agreements negotiated pursuant to the Act of 1889 did not create any rights in appellants in the diminished Red Lake Reservation	18
II. Appellants are not entitled to recover for the lands added by the Executive Order of November 21, 1892	24
III. The court below did not err in including findings of fact relating to offsets	25
Conclusion	26
Appendix	28

CITATIONS

Cases:	
Chew Heong v. *United States*, 112 U. S. 536	17
Fairbanks v. *United States*, 223 U. S. 215	20
Frost v. *Wenie*, 157 U. S. 46	17
Herbring v. *Lee*, 280 U. S. 111	24
Logan v. *Davis*, 233 U. S. 613	18
Pennsylvania R. Co. v. *Public Utilities Commission*, 298 U. S. 170	24
United States v. *Johnston*, 124 U. S. 236	18
United States v. *Minnesota*, 270 U. S. 181	17

109074—36——1

Statutes:
Jurisdictional Statutes: Page
Act of May 14, 1926, c. 300, 44 Stat. 555 28
Act of May 18, 1928, c. 623, 45 Stat. 601 25
Act of June 18, 1934, c. 568, 48 Stat. 979 33
Act of June 22, 1936, c. 714, 49 Stat. 1826 34
Statutes relating to the Merits:
Act of January 14, 1889, c. 24, 25 Stat. 642 .. 3, 4, 14, 15, 36
Act of February 20, 1904, c. 161, 33 Stat. 46 ..... 23, 46
Treaties:
Treaty of Prairie des Chiens, 7 Stat. 272 11
Treaty of September 30, 1854, 10 Stat. 1109 11
Treaty of February 22, 1855, 10 Stat. 1165 12
Treaty of October 2, 1863, 13 Stat. 667 ..... 13, 16
Treaty of April 12, 1864, 13 Stat. 689 13
Treaty of May 7, 1864, 13 Stat. 693 12
Treaty of April 7, 1866, 14 Stat. 765 12
Treaty of March 19, 1867, 16 Stat. 719 12
Miscellaneous:
Cong. Rec., Vol. 19, Part 9, pp. 9130-9131 14
H. Ex. Doc. No. 247, 51st Cong., 1st Sess 12, 22
H. Rep. 789, 50th Cong., 1st Sess 13

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OPINION BELOW

The opinion of the Court of Claims (R. 36–113) is reported in 80 C. Cls. 410, and the order and memorandum on appellants' motion for a new trial (R. 34–35) are reported in 80 C. Cls. 487.

JURISDICTION

The judgment from which the appeal is taken was entered April 8, 1935 (R. 114). On January 14, 1935, the Court of Claims filed special findings of fact and conclusions of law (R. 36–113), and entered a judgment dismissing the petition (R. 34).

On February 15, 1935, appellants filed a motion for a new trial (R. 34). On April 8, 1935, the Court of Claims filed an order and memorandum allowing certain requested amendments to the special findings of fact, but overruled the motion for a new trial (R. 34–35). On May 6, 1935, appellants filed a petition for certiorari, which was denied on October 14, 1935 (R. 114; 296 U. S. 576). The present appeal was prayed for under authority of Public Resolution No. 121, approved June 22, 1936 (R. 114–115), and allowed on July 7, 1936 (R. 117). Probable jurisdiction was noted on October 12, 1936.

QUESTIONS PRESENTED

1. Whether certain agreements negotiated with various bands of Chippewa Indians under the Act of January 14, 1889, constituted appellants the beneficiaries of all lands in the Red Lake Reservation which are not necessary to make allotments to the individual Red Lake Indians.

2. Whether appellants are entitled to the value of certain land added to the Red Lake Reservation by the Executive Order of November 21, 1892.

STATEMENT

The facts as found by the Court of Claims (R. 36–87) may be summarized as follows:

The Chippewa Indians of Minnesota, appellants here, are a class composed of all the bands or tribes of Chippewa (or Ojibway) Indians in Minnesota at the time of the passage of the Act of Jan-

uary 14, 1889, *infra,* p. 36, and of the approval of the agreements negotiated thereunder. (Finding 2, R. 37.) This class includes the Red Lake band of Chippewa Indians of Minnesota, who intervened in the court below by authority of the Act of May 18, 1928, infra, p. 35 (Findings 3, R. 37; 6, R. 39).

The Chippewa Indians, in early times, constituted a very large tribe whose range was from Lake Huron westward into Minnesota and the Dakotas. They were composed of a large number of villages, bands, and local divisions, often bearing the names of the village, lake, or river near which they resided. Among these were a band living about Red Lake, in Northern Minnesota, and a band living on the Pembina River in Northern Minnesota and adjacent Manitoba. These were known as the Red Lake and Pembina bands. (Finding 3, R. 37.)

As early as 1785 treaties were made with the Chippewas. At first treaties were made with the "Chippewa Nation", but beginning in 1836 many treaties have been made with either one or a few separate bands of the Nation. Among these were treaties by which the Indians made cessions and were in turn granted reservations in the State of Minnesota. (Finding 3, R. 37–38.)

Prior to the Act of January 14, 1889 (*infra,* p. 36), therefore, the various Chippewa bands resided on twelve reservations in Minnesota (Finding 4, R. 38). That Act offered, for the acceptance or rejection of the Minnesota Chippewas, a plan for the cession to the United States, in trust, of all

the lands in their several reservations except those at White Earth and Red Lake. Only a part of each of these two reservations was to be ceded, and the remainder was to be reserved (Section 1). The ceded lands were to be sold, together with certain timber thereon (Sections 4, 5, 6) and the proceeds funded for the benefit of all the Chippewas of Minnesota as one group (Section 7). The plan provided for the concentration upon the diminished White Earth Reservation of all the Indians except those of Red Lake, who were to remain on the diminished Red Lake Reservation. The plan also provided that allotments to the Red Lake Indians on their reservation, and to the other Indians upon the White Earth Reservation, should be made "as soon as practicable". (Section 3.)

The Act provided that Commissioners should be appointed "to negotiate with all the different bands or tribes" to consummate the plan outlined above. As to the White Earth and Red Lake reservations the cessions were to be of so much "as in the judgment of said commission is not required to make and fill the allotments * * *." They were also required to make a census by bands and classes of all the Chippewas in Minnesota. (Section 1.) (Finding 10, R. 55–62.)

Pursuant to this Act Commissioners were duly appointed (Finding 13, R. 63–64). Beginning at Red Lake they held separate councils with the various Indians occupying each of the several reserva-

tions. Ten separate agreements were concluded. (Findings 13–15, R. 63–65.)

The agreements made with the Red Lake and Pembina bands who occupied the Red Lake Reservation provided that a part of that reservation should be ceded, and a part, which was carefully delimited, should be reserved. An identical agreement was made with a few of the Pembina band who were living on the White Earth Reservation (Finding 16, R. 66–67). The report of the Commissioners stated that the amount which was reserved was larger than would eventually be required to make allotments to the individual Indians, but explained their action by the statement that "as there are swamps and other untillable lands therein, it cannot be reduced until after survey and allotment shall be made." (Finding 20, R. 69.) No allotments have, in fact, ever been made on the diminished Red Lake Reservation (Finding 25, R. 73).

The eight other agreements, by ~~which~~ the bands who did not occupy or belong on the Red Lake Reservation, each ~~obtained~~ a clause substantially as follows (Finding 18, R. 68):

> We do also hereby cede and relinquish to the United States all our right, title, and interest in and to so much of the Red Lake Reservation as is not required and reserved under the provisions of said act to make and fill the allotments to the Red Lake Indians as therein provided.

This provision with reference to the Red Lake Reservation, as contained in these eight agreements, was assented to by more than two-thirds of the male adults of all the Chippewas of Minnesota, as required by the Act (Finding 19, R. 68). On March 4, 1890, the agreements were approved by the President and transmitted to Congress (Finding 22, R. 70–71).

On November 9, 1892, the chairman of the commission which had conducted the negotiations with the Red Lake Indians pointed out, in a letter to the Commissioner of Indian Affairs, that the map which the commission had used was inaccurate, and that a certain area should be added to the amount reserved by the Red Lake agreement to "preserve faith with the Indians * * *." As a result, this small additional area was added to the reservation by Executive Order of November 21, 1892, and has since been treated as a part of the reservation. (Finding 24, R. 72–73).

The Red Lake Reservation, as diminished by the agreement with the Red Lake and Pembina bands in 1889, and including the area added by the Executive Order of 1892, has since been held and administered by the Government as the separate property of the Red Lake bands (Findings 27–30, 34, R. 74–82, 83–85).

On February 20, 1904, the President approved an Act of Congress (*infra*, p. 46) amending, and ratifying as amended, an agreement which had theretofore been negotiated with the Red Lake and

Pembina bands. By that agreement a specified section of the diminished reservation, amounting to 256,152 acres, was ceded to the United States to be sold. The proceeds were to be distributed in *per capita* shares to the Indians on the reservation. (Article III.) It was further agreed that the Red Lake Indians should possess their diminished reservation independent of all other Chippewas and should be entitled to allotments of specified acreage thereon. (Article IV.) Under this Act the land was sold and the proceeds, $1,268,156.84, were credited to the Red Lake Indians. Findings 29–31; R. 76–82.)

Appellants' petition (R. 1–22) alleges that by the Act of January 14, 1889, and the agreements negotiated thereunder, the Red Lake Reservation, except so much as was necessary to make allotments to the Red Lake Indians, was ceded to the United States in trust, to be sold for the benefit of appellants (Par. 4, R. 13–14). Upon that premise, appellants claim that by the Act of February 20, 1904, the United States, by recognizing the Red Lake Indians as the sole owners of the Red Lake Reservation, took the land from appellants, to whom it rightfully belonged, in violation of this trust imposed by the Act of January 14, 1889 (Par. 7, R. 20–21). Appellants claim that the lands of which they had been deprived by the United States constitute *all* the lands of the Red Lake Reservation, alleging that the United States, by unduly de-

laying the allotment of the lands to the individual Red Lake Indians, has now disabled itself as trustee from administering that portion of the trust estate so taken in conformity with the terms of the original trust (Par. 9, R. 21). As a subsidiary claim, in the alternative, appellants allege that the Executive Order of November 21, 1892, improperly and without authority withdrew a portion of the lands held in trust for appellants (Par. 5, R. 14).

On October 24, 1928, the Red Lake bands of Indians, pursuant to the Act of May 18, 1928 (*infra*, p. 35) and leave of court, filed an intervening petition, denying the rights alleged by appellants (R. 23–34).

On January 14, 1935, the Court of Claims entered a judgment dismissing the petition (R. 34). Appellants filed a petition for certiorari, which was denied on October 14, 1935 (R. 114; 296 U. S. 576). The present appeal is taken under authority of Public Resolution No. 121, approved June 22, 1936 (R. 114–115).

SUMMARY OF ARGUMENT

I

Appellants' first claim for recovery rests upon the proposition that by certain agreements negotiated with the United States pursuant to the Act of January 14, 1889, appellants became the beneficiaries of all the lands in the Red Lake Reservation, as diminished by the agreements under that Act, which were not necessary to make allotments to the

individual Red Lake Chippewas. The Government believes this interpretation of the agreements to be wholly unwarranted. Prior to the Act of 1889, the Red Lake bands were the sole owners of the Red Lake Reservation, all other Chippewas having ceded any interest they might have had to the United States. This title in the Red Lake bands was recognized by the United States.

Appellants urge, however, that the Act of 1889, *supra*, recognizes that title is in appellants rather than in only the Red Lake bands. This conclusion is based upon a mere inference, and bearing in mind the fact that title prior to the Act was in the Red Lake bands, it is inconsistent with the principle that a statute should not be construed so as injuriously to divest Indians of their rights or to import bad faith on the part of the United States. The clause upon which appellants rely was, in reality, intended as a quit-claim by all other Indians.

Appellants, therefore, had nothing to cede, and the agreements by which they ceded all their rights could not have been cessions. They were, in fact, the quitclaims which Congress had authorized by the Act. This construction of the agreements is consistent with the statute and with the Red Lake agreements, both of which are inconsistent with appellants' contention.

II

The remaining arguments are very short and need not be summarized here.

ARGUMENT

I

THE AGREEMENTS NEGOTIATED UNDER THE ACT OF JANUARY 14, 1889, DID NOT CONSTITUTE APPELLANTS THE BENEFICIARIES OF A TRUST OF ANY LANDS IN THE DIMINISHED RED LAKE RESERVATION

In brief, appellants' first claim for recovery rests upon the proposition that the United States, in its capacity as trustee of certain lands, has recognized the Red Lake band of Chippewas as the exclusive beneficiaries of the trust, when it should have held the lands for the benefit of all the Chippewas of Minnesota. The lands in question, which constitute the corpus of the trust, are those lands which constituted the Red Lake Reservation in Northern Minnesota, as diminished pursuant to the Act of January 14, 1889 (*infra*, p. 36).

This claim is based upon the premise that, properly interpreted, certain agreements made pursuant to the Act of 1889, *supra*, ceded to the United States for the benefit of all the Minnesota Chippewas those lands at Red Lake which were not required to make allotments to the individual members of the Red Lake band. The Government believes that such an interpretation of the agreements is wholly unwarranted, particularly when it is borne in mind that the Indian title to the lands in question, prior to 1889, was solely in the Red Lake Indians. We will, therefore, first show that the title to the lands prior to the Act of 1889 was not in

appellants but in the Red Lake bands, and second, that in the light of that fact, neither the Act of 1889, nor the agreements with the Indians negotiated under it, can be interpreted as creating a trust of these lands for the benefit of appellants.

A. THE INDIAN TITLE TO THE RED LAKE RESERVATION PRIOR TO THE ACT OF 1889 WAS SOLELY IN THE RED LAKE AND PEMBINA BANDS

The earliest treaties concluded by the United States with the Chippewas may be said to treat the entire Chippewa region, which included a very large territory in what is now Northern Minnesota and the Dakotas, as belonging to the Chippewa Nation, as a whole. See, *e. g.*, Treaty of Prairie des Chiens, 7 Stat. 272. From 1836 on, however, Congress began to take account of the various bands, which were, in fact, distinct units, with marked differences from each other, and with well-defined territories (R. 37), and negotiated treaties with either a separate band or a few bands of the Chippewas. Long before 1889, through these separate treaties, the various bands which, in 1889, occupied the Minnesota reservations, excepting only the bands at Red Lake, had ceded to the United States all title which they might ever have had to the Red Lake Reservation. Each of these treaties involved cessions, and the consideration, in each case, was received by the particular band or bands who were parties to the treaty.

Thus, by the Treaty of September 30, 1854 (10 Stat. 1109) the Chippewas of Lake Superior and

the Chippewas of the Mississippi made mutual cessions, divided by a generally north-south line. The Fond du Lac and Grand Portage bands, each part of the Lake Superior Chippewas, joined in this treaty and by it (Article I) relinquished all their rights in lands west of the dividing line, including the Red Lake territory. The Bois Forte band of the Lake Superior Chippewas, who were parties to the treaty were, by Article XII, of this treaty, excepted from this cession, but, by the Treaty of April 7, 1866 (14 Stat. 765) they made a similar cession (Article II). The band which, in 1889, occupied the Deer Creek Reservation was, in 1866, a part of the Bois Forte band.

By the Treaty of February 22, 1855 (10 Stat. 1165), the Mississippi, Pillager, and Lake Winnibigoshish Chippewas ceded all their rights, of whatever nature, in and to any lands in the Territory of Minnesota, or elsewhere, to the United States, and in return received certain expressly delimited reservations (Article I). None of the land in these reservations included any of the Red Lake Reservation. The bands which joined in this treaty included those Chippewas who were, in 1889, occupying the White Earth, White Oak Point, Mille Lac, Leech Lake, Lake Winnibigoshish, and Cass Lake reservations. See H. Ex. Doc. No. 247, 51st Cong., 1st Sess. See also Treaties of May 7, 1864 (13 Stat. 693) and March 19, 1867 (16 Stat. 719).

Even prior to the last of these treaties, that with the Bois Forte band of April 7, 1866, *supra,* the

Government had negotiated treaties with the Red Lake bands, upon the assumption that they were the exclusive owners of the Red Lake territory. By the Treaty of October 2, 1863 (13 Stat. 667), for example, the Red Lake and Pembina bands ceded to the United States a large part of the area "owned and occupied by them" (Article II), for which the Government agreed to pay, for their sole benefit, a valuable consideration (Article III). The remainder of the area continued to be occupied by the Red Lake bands, and was referred to as "the reservation" (Article VI). See also the Amendatory Treaty of April 12, 1864 (13 Stat. 689). By these treaties the title of the Red Lake and Pembina bands to the Red Lake Reservation was clearly recognized by the United States.[1]

In fact, the only support for the contention that the Red Lake Reservation was the common property of all the Chippewas is the Report of the House Committee on Indian Affairs on the Act of January 14, 1889 (H. Rep. No. 789, 50th Cong., 1st Sess.). It is there stated (p. 2):

> The so-called Red Lake Reservation is simply a remnant of unceded Indian Territory occupied at present by the Red Lake band, but really the common property, so

[1] The fact that the treaties of 1863 and 1864 did not fully delimit the boundaries of the reservation is of no moment. At most, it was the concern of the parties themselves. Eventually they were fully determined (Findings 3, 4, R. 37–38; 6–8, R. 39–51).

> far as the Indian title is concerned, of all the Chippewa Indians in Minnesota.

Similar statements with regard to the title to the Red Lake lands are made on pp. 5–6 (Finding 9, R. 53–55).

The conclusion of the Committee is completely at variance with the other facts with regard to the title to this land. It ignores completely the treaties of 1854, 1855 and 1866, by which all the Minnesota Chippewas, except the Red Lake and Pembina bands, had ceded away any title they might have had in the Red Lake lands. It is inconsistent with the Treaty of October 2, 1863, *supra*, in which the United States treated with the Red Lake bands as the sole owners of these lands. It is at variance with opinions of the Commissioner of Indian Affairs (Finding 8, R. 50–51). It was questioned and disputed by members of the Senate during the course of debate on the bill.[2] We submit, therefore, that whatever probative value it might have had, standing alone, has been completely overcome by the other evidence, and that beyond question the title to the Red Lake Reservation prior to the Act of 1889 was solely in the Red Lake and Pembina bands.

B. NEITHER THE ACT OF JANUARY 14, 1889, NOR THE AGREEMENTS NEGOTIATED THEREUNDER, VESTED ANY TITLE TO THE RED LAKE RESERVATION IN THE APPELLANTS

The major provisions of the Act of January 14, 1889 (*infra*, p. 36), have already been set out in

[2] See Cong. Rec., Vol. 19, Pt. 9, pp. 9130–9131.

the statement (pp. 3–4, *supra*). In general, that Act was designed to unite all the Chippewas in Minnesota on two reservations, instead of on the twelve then in existence (Finding 4, R. 38). Even the two remaining, the White Earth and Red Lake reservations, were to be substantially reduced in size (Section 1.) The remaining reservations, and the parts not reserved of the White Earth and Red Lake reservations, were to be ceded to the United States to be sold for the benefit of all the Minnesota Chippewas (Section 7).

Appellants, in support of their claim to the title to the Red Lake Reservation, rely very largely upon the provision in Section 1 of that Act, which, with regard to the cession of the various lands, provided that:

> * * * such cession and relinquishment shall be deemed sufficient as to each of said several reservations, except as to the Red Lake Reservation, if made and assented to in writing by two-thirds of the male adults over eighteen years of age of the band or tribe of Indians occupying and belonging to such reservations; and as to the Red Lake Reservation the cession and relinquishment shall be deemed sufficient if made and assented to in like manner by two-thirds of the male adults of all the Chippewa Indians in Minnesota; * * *.

Construing the clause most favorably to appellants' contention, it is but a recognition of title in them by mere inference. It falls far short of being

a recognition in plain and definite terms. Moreover, apart from that fact, there are several factors which indicate that the clause should not be construed as appellants contend.

The most important factor to be considered is the title to the Red Lake Reservation prior to 1889. As we have already pointed out, there can be no serious question of the title of the Red Lake bands. Appellants' construction would mean, therefore, that Congress, by that one clause, was arbitrarily transferring from the Red Lake bands to the appellants all of the Reservation which was not necessary for allotments to the individual Red Lake Indians.[3] It would mean that Congress was doing this without any negotiation with the Red Lake Indians, and it would mean that Congress was making a complete *volte face* from its position in the Treaty of October 2, 1863 (*supra*, p. 13), in which it recognized and treated with the Red Lake Indians as the sole owners of the Red Lake Reservation. Moreover, such a construction is directly contrary to the policy stated in frequent decisions of this Court that no statute shall be construed so as injuriously to divest Indians of their rights or to import bad faith on the part of the United States, unless such intent is clearly and explicitly

[3] Based on the census of 1889 (Finding 13, R. 63–64) this would have amounted to a change in the title of the Red Lake bands from a complete title to approximately an undivided one-seventh interest.

expressed, and the statute admits of no other reasonable construction. *Frost* v. *Wenie*, 157 U. S. 46, 49, 60; *Chew Heong* v. *United States*, 112 U. S. 536, 559; *United States* v. *Minnesota*, 270 U. S. 181, 206.

Actually, the clause seems to have been intended as a direction to secure a quit claim from all the other Chippewas with respect to the Red Lake Reservation. The report of the House Committee on Indian Affairs (*supra*, pp. 13–14) may have created a doubt as to the title of the Red Lake bands, and Congress may have wished to settle the matter definitely in this way. This construction of the clause is borne out by the provision of Section 1 which directed the Commissioners to negotiate with *all* the different bands of Minnesota Chippewas. Two of these bands occupied the Red Lake Reservation, and, without question, the Act directed that separate negotiations be held with these bands. The implication is clear that whatever cessions were to be made at Red Lake should meet with their approval. Appellants are forced to contend that the Red Lake cessions could be made by two-thirds of the male adult Chippewas in Minnesota even if the dissenting one-third contained every Red Lake and Pembina adult male. Obviously, that construction renders nugatory the provision that negotiations be held with *all* the different bands.

Moreover, it should be noted that appellants urge this construction now for the first time. So far as

the record shows, the title of the Red Lake Indians has never been attacked by virtue of the Act of 1889 until the filing of the present suit in 1927. This uniform course of construction over the course of 38 years, during all of which the United States has treated the Red Lake Indians as the sole owners, should be practically conclusive against the construction of the statute which is now urged by appellants. *Logan* v. *Davis*, 233 U. S. 613, 627; *United States* v. *Johnston*, 124 U. S. 236, 253.

C. THEREFORE, THE AGREEMENTS NEGOTIATED PURSUANT TO THE ACT OF 1889 DID NOT CREATE ANY RIGHTS IN APPELLANTS IN THE DIMINISHED RED LAKE RESERVATION

The final step in appellants' argument is their contention that by the agreements negotiated under the 1889 Act they ceded to the United States all the lands at Red Lake not necessary for allotments to the Red Lake Indians. A short description of how these agreements were negotiated will be of assistance in interpreting them properly.

As directed by the Act, the Commissioners negotiated separately with each of the different bands or tribes of Chippewa Indians in Minnesota and entered into agreements with respect to each separate reservation (Finding 15, R. 65). They negotiated, first, with the Red Lake and Pembina bands belonging to and occupying the Red Lake Reservation (Finding 14, R. 64) and made a separate agreement with them (Finding 16, R. 66–67). An

identical agreement was made with some of the Pembinas living on the White Earth Reservation (*Id.*). During the negotiations the purposes of the Act and the purposes of the agreement for which they were negotiating were explained by the Commissioners as they understood them, and as the Indians were made to understand them. Referring to the land to be reserved, the Commissioners told the Indians that it would belong to them and their children forever and that the other bands of Chippewa Indians had no rights therein (Finding 14, R. 64). The wishes of the Red Lake Indians with respect to the part of their reservation to be ceded and the part to be reserved were carefully considered. The area retained by the Indians and reserved for them by the Commissioners was finally agreed upon and set out by metes and bounds in the agreement which was duly executed. All of the remainder of the reservation was ceded (Finding 16, R. 66–67).

After executing the Red Lake agreement, the Commissioners met the other bands or tribes of Chippewas, held numerous council meetings with them at their various reservations (Finding 13, R. 64), and entered into eight additional agreements (Findings 15, R. 65; 17–18, R. 67–68). Under the agreement at White F th Reservation a part was retained by the Indians and reserved by the Commissioners and the remainder ceded (Finding 16, R. 67).

Each of these last eight agreements contains the clause upon which appellants rely (Finding 18, R. 68):

> We do also hereby cede and relinquish to the United States all our right, title, and interest in and to so much of the Red Lake Reservation as is not required and reserved under the provisions of said act to make and fill the allotments to the Red Lake Indians as therein provided.

Based upon this contention that the Act of 1889 constituted a recognition of common ownership of the Red Lake Reservation as being in all of the Chippewas, appellants contend further that this clause ceded all of the Red Lake Reservation, save only enough to make allotments, to the United States in trust for all the Indians.

If we are correct in our contention that the 1889 Act did not recognize appellants' title in the Red Lake Reservation, it seems obvious that this clause in the agreements cannot possibly be construed as a cession of the lands by the appellants, for they had, in fact, nothing to cede. That fact alone, we believe, is enough to defeat the construction for which appellants contend. Actually, however, this construction is inconsistent not only with the Act itself, but also with other agreements which were negotiated under it.

Taken as a whole, it is clear that the Act of 1889 distinguished clearly between land that was to be *ceded* and land that was to be *reserved*. See *Fair-*

banks v. United States, 223 U. S. 215, 222–223. Certain of the reservations were, unquestionably, to be ceded, but a portion of both the White Earth and Red Lake reservations was to be reserved (Section 1). With respect to these two reservations, the cession was to be of (*Id.*)—

> * * * so much of these two reservations *as in the judgment of said commission* is not required to make and fill the allotments required by this and existing acts, *and shall not have been reserved by the Commissioners* for said purposes, * * *

In other words, what was to be ceded and what was to be reserved was to be worked out by the Commissioners with the bands involved, and the Commissioners were authorized to exercise their own judgment, subject only to the approval of the President.

The negotiations of the Commissioners with the Red Lake and Pembina bands resulted in an identical agreement with each band that a large portion of the Red Lake Reservation should be ceded and the remainder, which was carefully described, should be reserved. The reserved portion was larger than, in the judgment of the Commissioners, would eventually be required to fill allotments, but they stated in their Report to the Secretary of the Interior that it could not be reduced until after survey and allotment (Finding 20, R. 69).

The contention of the appellants requires that these agreements with the Red Lake and Pembina

bands be set at naught, for, by this construction, a large portion of even the lands which these agreements expressly reserved is to be considered as included in the cession. Moreover, it requires that the distinction between lands *reserved* and lands *ceded* be completely abandoned, for there can be no question that the lands which appellants claim were expressly reserved. Appellants suggest (Br. p. 45) that the Commissioners reserved the land temporarily, but that is creating a new category of land which is not even suggested in the Act.

Nor can appellants urge that the agreements which were, in fact, negotiated with the Red Lake bands were beyond the authority of the Commissioners or in contravention of the Act. They were specifically approved by the President (Finding 22, R. 70–71), who, as appellants admit (Br. 42), was the sole judge whether the agreements conformed to the Act. Moreover, on the same day the President transmitted to Congress the report of the Commissioners, the agreements, and the accompanying papers, with a statement of his approval (H. Ex. Doc. No. 247, 51st Cong., 1st Sess.). Congress, thus fully advised, has confirmed the action of the Commissioners in making the reservation at Red Lake, not only by never indicating that the agreements were unsatisfactory, but also by passing many subsequent Acts which amount to confirmation of the Red Lake agreements (Finding 34, R. 83–85).

Properly construed, this clause in the eight agreements upon which appellants rely constitutes merely the assent and confirmation of all the Indians to the cessions made by the Red Lake bands and to the reservations which the Commissioners, in the exercise of their judgment, had reserved. This construction gives it the effect of the quit-claim which was apparently intended by the two-thirds clause of the statute. At the same time, it preserves the Red Lake agreements and the distinction between reserved and ceded land.

It should be pointed out that this construction of the agreements is by no means inequitable, so far as appellants are concerned. The land ceded by all the Indians to set up the trust for their joint benefit amounted to about 3,670,000 acres (Finding 23; R. 71). Of this amount the Red Lake and Pembina bands contributed about 2,900,000 acres, or over 79 percent (*Id.*). It is manifestly a great injustice to these bands to contend that they should now be held to have ceded many acres more.

We submit, therefore, that the Red Lake Reservation, as diminished by the Red Lake and Pembina agreements, was the sole property of the Red Lake and Pembina bands. If that be so, appellants cannot complain of any action of Congress by which it treated with those bands as the sole owners. Specifically, there was no violation of appellants' rights when Congress, by the Act of February 20, 1904, recognized the exclusive title of the

Red Lake bands and, with their consent, sold a large portion of the diminished reservation and treated the proceeds as the exclusive property of those bands. This claim was, therefore, properly dismissed by the court below.

II

Appellants Are Not Entitled to Recover for the Lands Added by the Executive Order of November 21, 1892

Appellants urge, as a wholly distinct claim, that a portion of the lands ceded by the original agreement with the Red Lake Indians was thereafter improperly added by executive order to the reserved lands and consequently taken from the corpus of the trust of which they are the beneficiaries. No error has been assigned to the ruling of the lower court dismissing this claim, and appellants, therefore, may not urge the point here. *Pennsylvania R. Co.* v. *Public Utilities Commission*, 298 U. S. 170, 177; *Herbring* v. *Lee*, 280 U. S. 111. In any event we submit that the action taken was not improper.

The negotiations with the Red Lake Indians were conducted upon the basis of the only guide which the parties had—the current Rand-McNally map. Upon this map, which the parties believed to be correct, they outlined the diminished reservation. Actually, because the map was inaccurate, the parties, contrary to the intention of each, agreed upon a line which left a portion of the eastern shore

of lower Red Lake out of the reserved area (Finding 24, R. 72).

This mistake was called to the attention of the President in a letter from Mr. Rice, Chairman of the Commission under the Act of 1889, in which he recommended that there be reserved from sale and added to the reservation the tract of land omitted by mutual mistake, in order to preserve faith with the Indians. The President thereupon added, by Executive Order of November 21, 1892, the 2,984.64 acres involved. This tract has since been considered a part of the Red Lake Reservation. (R. 31, Finding 24, R. 72–73.)

This addition was merely the recognition of the mutual mistake of the parties and, in effect, carried out the original agreement. The area, in other words, was in fact included in the agreements as negotiated and, as reserved land, was never included in the cession for appellants' benefit. We submit that on no theory is appellant entitled to recover the value of the lands.

III

The Court Below Did Not Err in Including Findings of Fact Relating to Offsets

Appellants urge that the court below erred in finding the facts with reference to the offsets advanced by the defendant in the court below. (Findings 37, 38, 39, 40, 41, R. 86–87).

In view of the fact that the court below held that appellants were not entitled to recover, there was no necessity for determining whether or not the offsets were proper under the jurisdictional act, and this question was not, in fact, determined (R. 35). Consequently, as the court below did not decide any issue based upon these findings, it committed no error.

The facts set forth in these findings will be material only in the event that this Court should reverse and remand the case for further action.

CONCLUSION

Wherefore, it is respectfully submitted that the decision below was correct, and should be affirmed.

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DECEMBER, 1936.

APPENDIX

INDEX

JURISDICTIONAL STATUTES

	Page
Act of May 14, 1926, c. 300, 44 Stat. 555	28
Act of June 18, 1934, c. 568, 48 Stat. 979	33
Act of June 22, 1936, c. 714, 49 Stat. 1826	34
Act of May 18, 1928, c. 623, 45 Stat. 601	35

STATUTES RELATING TO THE MERITS

Act of January 14, 1889, c. 24, 25 Stat. 642	36
Act of February 20, 1904, c. 161, 33 Stat. 46	46

APPENDIX

JURISDICTION

Act of May 14, 1926, c. 300, 44 Stat. 555:

An Act Authorizing the Chippewa Indians of Minnesota to submit claims to the Court of Claims

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction be, and is hereby, conferred upon the Court of Claims, with right of appeal to the Supreme Court of the United States by either party as in other cases, notwithstanding the lapse of time or statutes of limitation, to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of the Act of January 14, 1889 (Twenty-fifth Statutes at Large, page 642), or arising under or growing out of any subsequent Act of Congress in relation to Indian affairs which said Chippewa Indians of Minnesota may have against the United States, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States.

SEC. 2. Any and all claims against the United States within the purview of this Act shall be forever barred unless suit or suits be instituted or petition filed as herein provided in the Court of Claims within five years from the date of the approval of this Act, and such suit or suits shall make the

Chippewa Indians of Minnesota party plaintiff and the United States party defendant. The petition shall be verified by the attorney or attorneys employed to prosecute such claim or claims under contract with the said Chippewa Indians approved in accordance with existing law; and said contract shall be executed in their behalf by a committee or committees to be selected by said Chippewa Indians as hereinafter provided. Official letters, papers, documents, and records, or certified copies thereof, may be used in evidence, and the departments of the Government shall give access to the attorney or attorneys of said Chippewa Indians to such treaties, papers, correspondence, or records as they may require in the prosecution of any suit or suits instituted under this Act.

SEC. 3. In said suit or suits the court shall also hear, examine, consider, and adjudicate any claims which the United States may have against the said Chippewa Indians, and any payment or payments which may have been made by the United States upon any claim against the United States by said Indians shall not operate as an estoppel, but may be pleaded as an offset in such suit or suits as may gratuities, if any, paid to or expended for said Indians subsequent to January 14, 1889.

SEC. 4. If it be determined by the court that the United States, in violation of the terms and provisions of any law, treaty, or agreement as provided in section 1 hereof, has unlawfully appropriated or disposed of any money or other property belonging to the Indians, damages therefor shall be confined to the value of the money or other property at the time of such appropriation or disposal, together with interest thereon at 5 per centum per annum from the date

thereof; and with reference to all claims which may be the subject matter of the suits herein authorized, the decree of the court shall be in full settlement of all damages, if any, committed by the Government of the United States and shall annul and cancel all claim, right, and title of the said Chippewa Indians in and to such money or other property.

SEC. 5. If in any suit by all the Chippewas of Minnesota against the United States it appears to the court that any band or bands of said Indians are, or claim to be, the exclusive legal or equitable owners, or are entitled to, or claim, a legal or equitable interest greater than an equal distributive share with all the Chippewa Indians of Minnesota, in the proceeds of any judgment or decree that may be entered or passed in settlement of any claims submitted hereunder, the court may permit, or of its own motion compel said band or bands to be made parties to any such suit, so that their rights may be fully and finally determined: *Provided, however,* That nothing herein contained shall be construed as conferring jurisdiction on the court to entertain and hear complaints or claims of a purely individual nature. In the event that any band or bands of said Indians are made parties to any suit herein authorized, the Secretary of the Interior shall ascertain, in such manner as he may deem best, the attorney desired by a majority of said Indians and shall permit the employment of an attorney under contract to represent them as provided by existing law, the compensation to be paid said attorney to be fixed by the Secretary of the Interior, and paid out of any money in the Treasury to the credit of said band or bands of said Indians.

SEC. 6. Authority is hereby given for the employment of not to exceed two attorneys or firms of attorneys to represent the Chippewa Indians of Minnesota in the prosecution of any such suit. Under the direction of the Secretary of the Interior the Indians belonging on the White Earth Reservation are authorized to select a committee consisting of five of their members, and all the other Chippewa Indians in Minnesota are authorized to select a like committee from their members. Each committee so selected, or a majority thereof, is authorized to designate an attorney or firm of attorneys and to execute a contract with such attorney or firm in accordance with section 2 hereof.

SEC. 7. The two attorneys or firms of attorneys authorized to be employed under section 6 shall each receive, during their employment, compensation at the rate of $6,000 per annum, for a period of not exceeding five years, payable in monthly installments as the same become due, and the Secretary of the Treasury is hereby authorized and directed to pay said amounts or installments out of the trust funds standing to the credit of said Indians in the Treasury of the United States, and upon the final determination of said suit the Court of Claims may separately allow said attorneys, or firms of attorneys, such additional compensation as it may deem just and proper considering the nature, extent, character, and value of all services rendered, but in no event shall said additional compensation for the two attorneys or firms of attorneys be in excess of 5 per centum of the total amount recovered; and in no event shall such additional compensation for the two attorneys or firms of attorneys exceed $40,000: *Provided,* That

any such additional compensation shall be fixed by said court in its decree and shall be paid by the Secretary of the Treasury as herein authorized from the trust funds of said Indians standing to their credit in the Treasury of the United States.

SEC. 8. All actual and necessary expenses incurred in the prosecution of said suit by the attorney or attorneys so employed to represent the Chippewa Indians of Minnesota shall be paid by the Secretary of the Treasury as herein authorized as they arise out of the funds standing to the credit of said Indians in the Treasury of the United States upon first being allowed by said court and certified to the Secretary of the Interior.

SEC. 9. Should either of the Indian committees referred to in section 6 hereof be unable or unwilling within one year from the approval by the Secretary of the Interior of the selection of said committees, to designate an attorney or firm of attorneys, the Commissioner of Indian Affairs and the Secretary of the Interior, on behalf of the Indians, are hereby authorized to execute a contract with an attorney or attorneys under such terms and conditions as they may deem advisable, not inconsistent with the terms of this Act.

SEC. 10. The proceeds of all amounts, if any, recovered for said Indians shall be deposited in the Treasury of the United States to the credit of the Indians decreed by said court to be entitled thereto, and shall draw interest at the rate of 5 per centum per annum from the date of the judgment or decree. The costs incurred in any suit hereunder shall be taxed against the losing party; if against the United States such costs shall be included in the amount of the judg-

ment or decree, and if against said Indians shall be paid by the Secretary of the Treasury out of the funds standing to their credit in the Treasury of the United States.

Amending Act of June 18, 1934, c. 568, 48 Stat. 979:

An Act To amend an Act approved May 14, 1926 (44 Stat. 555), entitled "An Act authorizing the Chippewa Indians of Minnesota to submit claims to the Court of Claims"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of an Act approved May 14, 1926 (44 Stat. 555), be, and the same is hereby, amended to read as follows:

"SECTION 1. That jurisdiction be, and is hereby, conferred upon the Court of Claims, with right of appeal to the Supreme Court of the United States by either party as in other cases, notwithstanding the lapse of time or statute of limitations, to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of the Act of January 14, 1889 (25 Stat. L. 642), or arising under or growing out of any subsequent Act of Congress in relation to Indian Affairs which said Chippewa Indians of Minnesota may have against the United States, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States. In any such suit or suits the plaintiffs, the Chippewa Indians of Minnesota, shall be considered as including and representing all those entitled to share in the final distribution of

the permanent fund provided for by section 7 of the Act of January 14, 1889 (25 Stat. L. 642), and the agreements entered into thereunder: *Provided,* That nothing herein shall be construed to affect the powers of the Secretary of the Interior to determine the roll or rolls of the Chippewa Indians of Minnesota for the purpose of making any distribution of the permanent Chippewa fund or of the interest accruing thereon or of the proceeds of any judgments: *Provided further,* That nothing herein shall be construed to authorize the submission to the Court of Claims for determination of any individual claim or claims to enrollment with the Chippewa Indians of Minnesota or to share in the interest or principal of the permanent Chippewa fund or in any funds hereafter acquired: *Provided further,* That the qualifications necessary to such enrollment shall not be changed or affected in any manner by the provisions of this Act.

Act of June 22, 1936, c. 714, 49 Stat. 1826:

JOINT RESOLUTION

To carry out the intention of Congress with reference to the claims of the Chippewa Indians of Minnesota against the United States

Whereas by the Special Jurisdictional Act approved May 14, 1926 (44 Stat. L. 555), the claims of the Chippewa Indians of Minnesota against the United States were referred to the Court of Claims "with right of appeal to the Supreme Court of the United States by either party as in other cases", it being the intention that both parties should have the right of appeal to the Supreme Court; and

Whereas the Supreme Court has since decided that notwithstanding such a provision there is no right of appeal, in view of the Judicial Code, as amended, unless the Jurisdictional Act specifically provides that the Supreme Court shall review a case on appeal, anything in the Judicial Code to the contrary notwithstanding: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the claims of the Chippewa Indians of Minnesota under the said Jurisdictional Act of May 14, 1926, shall be reviewed by the Supreme Court of the United States on appeal from the Court of Claims, anything in the Judicial Code, or amendments thereto, notwithstanding: *Provided,* That in any case heretofore decided by the Court of Claims said appeal shall be perfected by either party to the controversy within one year from the passage of this joint resolution, and an appeal shall be taken in all cases hereafter decided by the Court of Claims within three months from and after the date final judgment or decree is entered therein in the Court of Claims.

Act of May 18, 1928, c. 623, 45 Stat. 601:

An Act To confer additional jurisdiction upon the Court of Claims under an Act entitled "An Act authorizing the Chippewa Indians of Minnesota to submit claims to the Court of Claims," approved May 14, 1926

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in case numbered H–76 heretofore filed in the

Court of Claims under and in pursuance of an Act of Congress entitled "An Act authorizing the Chippewa Indians of Minnesota to submit claims to the Court of Claims," approved May 14, 1926 (Forty-fourth Statutes at Large, page 555), wherein the Chippewa Indians of Minnesota are parties plaintiff and the United States is party defendant, if the Court of Claims shall determine that the said Chippewa Indians are entitled to recover a judgment against the United States upon the cause of action therein set forth, the said court shall further determine whether such judgment, or any part thereof, shall be paid by the United States out of funds held by the United States in trust for the Red Lake Band of Chippewa Indians of Minnesota, and if the court shall so determine and said funds are found inadequate, then the unsatisfied portion of said judgment shall be paid by the United States, but in no event shall any part of the land of the Red Lake Reservation be used in any way in payment thereof; and the said Red Lake Band of Chippewa Indians is hereby authorized, on the approval of this Act, to appear in said suit by their attorneys employed in accordance with the provisions of existing law, and defend their rights in the matter.

MERITS

Act of January 14, 1889, c. 24, 25 Stat. 642:

An act for the relief and civilization of the Chippewa Indians in the State of Minnesota

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby authorized and directed, within sixty days

after the passage of this act, to designate and appoint three Commissioners, one of whom shall be a citizen of Minnesota, whose duty it shall be, as soon as practicable after their appointment, to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts, and shall not have been reserved by the Commissioners for said purposes, for the purposes and upon the terms hereinafter stated; and such cession and relinquishment shall be deemed sufficient as to each of said several reservations, except as to the Red Lake Reservation, if made and assented to in writing by two-thirds of the male adults over eighteen years of age of the band or tribe of Indians occupying and belonging to such reservations; and as to the Red Lake Reservation the cession and relinquishment shall be deemed sufficient if made and assented to in like manner by two-thirds of the male adults of all the Chippewa Indians in Minnesota; and provided that all agreements therefor shall be approved by the President of the United States before taking effect: *Provided further,* That in any case where an allotment in severalty has heretofore been made to any Indian of land upon any of said reservations, he shall not be deprived thereof or disturbed therein except by his own individual consent separately and previously given, in such form and manner as may be prescribed by the Sec-

retary of the Interior. And for the purpose of ascertaining whether the proper number of Indians yield and give their assent as aforesaid, and for the purpose of making the allotments and payments hereinafter mentioned, the said commissioners shall, while engaged in securing such cession and relinquishment as aforesaid and before completing the same, make an accurate census of each tribe or band, classifying them into male and female adults, and male and female minors; and the minors into those who are orphans and those who are not orphans, giving the exact numbers of each class, and making such census in duplicate lists, one of which shall be filed with the Secretary of the Interior, and the other with the official head of the band or tribe; and the acceptance and approval of such cession and relinquishment by the President of the United States, shall be deemed full and ample proof of the assent of the Indians, and shall operate as a complete extinguishment of the Indian title without any other or further acts or ceremony whatsoever for the purposes and upon the terms in this act provided.

SEC. 2. That the said commissioners shall, before entering upon the discharge of their duties, each give a bond to the United States in the sum of ten thousand dollars, with sufficient sureties, to be approved by the Secretary of the Interior, and conditioned for the faithful discharge of their duties under this act, and they shall also each take an oath to support the Constitution of the United States, and to faithfully discharge the duties of their office, which bonds and oaths shall be filed with the Secretary of the Interior. Said commissioners shall be entitled to a compensation of ten dollars per

day for each day actually employed in the discharge of their duties, and for their actual traveling expenses and board, not exceeding three dollars per day. Said commissioners shall also be authorized to employ a competent interpreter while engaged in the performance of their duties, at a compensation and allowance to be fixed by them, not in excess of that allowed to each of them under this act.

SEC. 3. That as soon as the census has been taken, and the cession and relinquishment has been obtained, approved, and ratified, as specified in section one of this act, all of said Chippewa Indians in the State of Minnesota, except those on the Red Lake Reservation, shall, under the direction of said commissioners, be removed to and take up their residence on the White Earth Reservation, and thereupon there shall, as soon as practicable, under the direction of said commissioners, be allotted lands in severalty to the Red Lake Indians on Red Lake Reservation, and to all the other of said Indians on White Earth Reservation, in conformity with the act of February eighth, eighteen hundred and eighty-seven, entitled "An act for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes"; and all allotments heretofore made to any of said Indians on the White Earth Reservation are hereby ratified and confirmed with the like tenure and condition prescribed for all allotments under this act: *Provided, however,* That the amount heretofore allotted to any Indian on White Earth Reservation shall be deducted from the amount of allotment to which he or she is entitled under this act: *Provided fur-*

ther, That any of the Indians residing on any of said reservations may, in his discretion, take his allotment in severalty under this act on the reservation where he lives at the time of the removal herein provided for is effected, instead of being removed to and taking such allotment on White Earth Reservation.

SEC. 4. That as soon as the cession and relinquishment of said Indian title has been obtained and approved as aforesaid, it shall be the duty of the Commissioners of the General Land Office to cause the lands so ceded to the United States to be surveyed in the manner provided by law for the survey of public lands, and as soon as practicable after such survey has been made, and the report, field-notes, and plats thereof filed in the General Land Office, and duly approved by the Commissioner thereof, the said Secretary of the Interior, upon notice of the completion of such surveys, shall appoint a sufficient number of competent and experienced examiners, in order that the work may be done within a reasonable time, who shall go upon said lands thus surveyed and personally make a careful, complete, and thorough examination of the same by forty-acre lots, for the purpose of ascertaining on which lots or tracts there is standing or growing pine timber, which tracts on which pine timber is standing or growing for the purposes of this act shall be termed "pine lands", the minutes of such examination to be at the time entered in books provided for that purpose, showing with particularity the amount and quality of all pine timber standing or growing on any lot or tract, the amount of such pine timber to be estimated by feet in the manner usual in estimating such timber, which estimates and reports of all such examinations shall

be filed with the Commissioner of the General Land Office as a part of the permanent records thereof, and thereupon that officer shall cause to be made a list of all such pine lands, describing each forty-acre lot or tract thereof separately, and opposite each such description he shall place the actual cash value of the same, according to his best judgment and information, but such valuation shall not be at a rate of less than three dollars per thousand feet, board measure of the pine timber thereon, and thereupon such lists of lands so appraised shall be transmitted to the Secretary of the Interior for approval, modification, or rejection, as he may deem proper. If the appraisals are rejected as a whole then the Secretary of the Interior shall substitute a new appraisal and the same or original list as approved or modified shall be filed with the Commissioner of the General Land Office as the appraisal of said lands, and as constituting the minimum price for which said lands may be sold, as hereinafter provided, but in no event shall said pine lands be appraised at a rate of less than three dollars per thousand feet board measure of the pine timber thereon. Duplicate lists of said lands as appraised, together with copies of the field-notes, surveys, and minutes of examinations shall be filed and kept in the office of the register of the land office of the district within which said lands may be situated, and copies of said lists with the appraisals shall be furnished to any person desiring the same upon application to the Commissioner of the General Land Office or to the register of said local land office.

The compensation of the examiners so provided for in this section shall be fixed by the Secretary of the Interior, but in no event

shall exceed the sum of six dollars per day for each person so employed, including all expenses.

All other lands acquired from the said Indians on said reservations other than pine lands are for the purposes of this act termed "agricultural lands."

SEC. 5. That after the survey, examination, and appraisals of said pine lands has been fully completed they shall be proclaimed as in market and offered for sale in the following manner: The Commissioner of the General Land Office shall cause notices to be inserted once in each week for four successive weeks in one newspaper of general circulation published in Minneapolis, Saint Paul, Duluth, and Crookston, Minnesota; Chicago, Illinois; Milwaukee, Wisconsin; Detroit, Michigan; Philadelphia and Williamsport, Pennsylvania; and Boston, Massachusetts, of the sale of said lands at public auction to the highest bidder for cash at the local land office of the district within which said lands are located, said notice to state the time and place and terms of such sale. At such sale said lands shall be offered in forty-acre parcels, except in case of fractions containing either more or less than forty acres, which shall be sold entire. In no event shall any parcel be sold for a less sum than its appraised value. The residue of such lands remaining unsold after such public offering shall thereafter be subject to private sale for cash at the appraised value of the same upon application at the local land office.

SEC. 6. That when any of the agricultural lands on said reservation not allotted under this act nor reserved for the future use of said Indians have been surveyed, the Secretary of the Interior shall give thirty days'

notice through at least one newspaper published at Saint Paul and Crookston, in the State of Minnesota, and, at the expiration of thirty days, the said agricultural lands so surveyed, shall be disposed of by the United States to actual settlers only under the provisions of the homestead law: *Provided,* That each settler under and in accordance with the provisions of said homestead laws shall pay to the United States for the land so taken by him the sum of one dollar and twenty-five cents for each and every acre, in five equal annual payments, and shall be entitled to a patent therefor only at the expiration of five years from the date of entry, according to said homestead laws, and after the full payment of said one dollar and twenty-five cents per acre therefor, and due proof of occupancy for said period of five years; and any conveyance of said lands so taken as a homestead, or any contract touching the same, prior to the date of final entry, shall be null and void: *Provided,* That nothing in this act shall be held to authorize the sale or other disposal under its provision of any tract upon which there is a subsisting, valid, pre-emption or homestead entry, but any such entry shall be proceeded with under the regulations and decisions in force at the date of its allowance, and if found regular and valid, patents shall issue thereon: *Provided,* That any person who has not heretofore had the benefit of the homestead or pre-emption law, and who has failed from any cause to perfect the title to a tract of land heretofore entered by him under either of said laws may make a second homestead entry under the provisions of this act.

SEC. 7. That all money accruing from the disposal of said lands in conformity with the provisions of this act shall, after deducting

all the expenses of making the census, of obtaining the cession and relinquishment, of making the removal and allotments, and of completing the surveys and appraisals, in this act provided, be placed in the Treasury of the United States to the credit of all the Chippewa Indians in the State of Minnesota as a permanent fund, which shall draw interest at the rate of five per centum per annum, payable annually for the period of fifty years, after the allotments provided for in this act have been made, and which interest and permanent fund shall be expended for the benefit of said Indians in manner following: One-half of said interest shall, during the said period of fifty years, except in the cases hereinafter otherwise provided, be annually paid in cash in equal shares to the heads of families and guardians of orphan minors for their use; and one-fourth of said interest shall, during the same period and with the like exception, be annually paid in cash in equal shares per capita to all other classes of said Indians; and the remaining one-fourth of said interest shall, during the said period of fifty years, under the direction of the Secretary of the Interior, be devoted exclusively to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit; and at the expiration of the said fifty years, the said permanent fund shall be divided and paid to all of said Chippewa Indians and their issue then living, in cash, in equal shares: *Provided,* That Congress may, in its discretion, from time to time, during the said period of fifty years, appropriate, for the purpose of promoting civilization and

self-support among the said Indians, a portion of said principal sum, not exceeding five per centum thereof. The United States shall, for the benefit of said Indians, advance to them as such interest as aforesaid the sum of ninety thousand dollars annually, counting from the time when the removal and allotments provided for in this act shall have been made, until such time as said permanent fund, exclusive of the deductions hereinbefore provided for, shall equal or exceed the sum of three million dollars, less any actual interest that may in the meantime accrue from accumulations of said permanent fund; the payments of such interest to be made yearly in advance, and, in the discretion of the Secretary of the Interior, may, as to three-fourths thereof, during the first five years be expended in procuring livestock, teams, farming implements, and seed for such of the Indians to the extent of their shares as are fit and desire to engage in farming, but as to the rest, in cash; and whenever said permanent fund shall exceed the sum of three million dollars the United States shall be fully reimbursed out of such excess, for all the advances of interest made as herein contemplated and other expenses hereunder.

SEC. 8. That the sum of one hundred and fifty thousand dollars is hereby appropriated, or so much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, to pay for procuring the cession and relinquishment, making the census, surveys, appraisals, removal and allotments, and the first annual payment of interest herein contemplated and provided for, which money shall be expended

under the direction of the Secretary of the Interior in conformity with the provisions of this act. A detailed statement of which expenses, except the interest aforesaid, shall be reported to Congress when the expenditures shall be completed.

Act of February 20, 1904, c. 161, 33 Stat. 46:

An Act To authorize the sale of a part of what is known as the Red Lake Indian Reservation, in the State of Minnesota

Whereas James McLaughlin, United States Indian inspector, did, on the tenth day of March, anno Domini nineteen hundred and two, make and conclude an agreement with the adult male Indians of the Red Lake Reservation, in the State of Minnesota, which said agreement is in words and figures as follows:

"This agreement made and entered into this tenth day of March, nineteen hundred and two, by and between James McLaughlin, United States Indian Inspector, on the part of the United States, and the Red Lake and Pembina bands of Chippewa Indians belonging on the Red Lake Reservation in the State of Minnesota; witnesseth:

"ARTICLE I. The said Indians belonging on the Red Lake Indian Reservation, Minnesota, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title and interest in and to all that part of the Red Lake Indian Reservation situate within the boundaries of Red Lake County, Minnesota, as said county is at present defined and organized the tract hereby ceded being more particularly described as

embracing all that part of the said Red Lake Indian Reservation lying west of the range line between ranges thirty-eight (38) and thirty-nine (39) west of the Fifth (5th) Principal Meridian, the tract of land hereby ceded approximating two hundred and fifty-six thousand one hundred and fifty-two (256,152) acres, and also hereby agree that all of said Indians now residing on the tract hereby ceded shall remove to the diminished reservation within six months after the ratification of this agreement, and shall be paid not exceeding five thousand (5000) dollars in cash by the Indians of said Red Lake Reservation out of the first payment received by them from the proceeds of this cession said five thousand (5000) dollars, or so much thereof as may be necessary, to be paid equitable to those thus removing, in proportion to the value of their respective improvements, which payment by said Red Lake Indians, shall be in full for all improvements which they will abandon, and also for the removal within the diminished reservation of their dead from where they are now buried on the tract hereby ceded.

"ARTICLE II. In consideration of the land ceded, relinquished, and conveyed by Article I of this agreement, the United States stipulates and agrees to pay to said Indians, in the manner hereinafter provided, the sum of one million (1,000,000) dollars.

"ARTICLE III. It is understood that of the amount to be paid to said Indians, as stipulated by Article II of this agreement, the sum of two hundred and fifty thousand (250,000) dollars shall be paid in cash, per capita, share and share alike, to each man, woman and child belonging on said Red Lake Indian Reservation, within ninety (90) days after the ratification of this agreement, and the re-

mainder of the said sum of one million dollars, viz, seven hundred and fifty thousand (750,000) dollars shall be paid in cash, per capita, in fifteen (15) annual installments of fifty thousand (50,000) dollars each, the first of which fifteen annual installments to be paid in the month of October of the year following that in which payment of the said two hundred and fifty thousand (250,000) dollars is made, as provided in this agreement, and in the month of October of each year thereafter of the succeeding fourteen years, covering the period of said fifteen annual installments.

"ARTICLE IV. It is further agreed that the said Indians belonging on said Red Lake Indian Reservation, Minnesota, shall possess their diminished Reservation independent of all other bands of the Chippewa tribe of Indians and shall be entitled to allotments thereon of one hundred and sixty (160) acres each, of either agricultural or pine land, the different class of land to be apportioned as equitably as possible among the allottees.

"ARTICLE V. It is understood that nothing in this agreement shall be construed to deprive the said Indians belonging on the Red Lake Indian Reservation, Minnesota, of any benefits to which they are entitled under existing treaties for agreements not inconsistent with the provisions of this agreement.

"ARTICLE VI. This agreement shall take effect and be in force when signed by United States Indian Inspector James McLaughlin and by a majority of the male adult Indians, parties hereto, and when accepted and ratified by the Congress of the United States.

"In witness whereof the said James McLaughlin, United States Indian Inspector, on the part of the United States, and the male adult Indians belonging on the Red Lake Indian Reservation, Minnesota, have hereunto set their hands and seals at Red Lake Indian Agency, Minnesota, this tenth day of March, A. D. Nineteen hundred and two.

[SEAL] "JAMES MCLAUGHLIN,
"*United States Indian Inspector.*

No.	Name		Mark	Age	
1	Kah bay no din	Chief	X	67	[SEAL]
2	Mays ko ko noz ay	do	X	70	[SEAL]
3	Pay she ke shig	do	X	35	[SEAL]
4	Nay ay tow up	do	X	54	[SEAL]
5	Ak mun e ay ke zhig	do	X	76	[SEAL]
6	I con je gwon abe	do	X	63	[SEAL]
7	Kay bay gah bow	do	X	55	[SEAL]

and 213 other male adult Indians."

We, the undersigned, hereby certify that the foregoing agreement was fully explained by us in open council to the Indians of the Red Lake Reservation, Minnesota; that it was fully understood by them before signing, and that the agreement was duly executed and signed by said Indians.

JOS: C. ROY,
C. W. MORRISON,
PETER GRAVES,
Interpreters.

RED LAKE AGENCY, MINN., *March 12, 1902.*

We, the undersigned, do hereby certify that we witnessed the signatures of James McLaughlin, U. S. Indian Inspector, and

the two hundred and twenty (220) Indians of the Red Lake Reservation, Minnesota, to the foregoing agreement.

DANIEL SULLIVAN,
Overseer in charge of Subagency.
FRANK H. KRATKA,
Mayor of Thief River Falls, Minn.
B. L. FAIRBANKS,
White Earth Agency, Minn.

RED LAKE AGENCY, MINNESOTA,
March 12, 1902.

I hereby certify that the total number of male adult Indians, over eighteen (18) years of age, belonging on the Red Lake Reservation, is three hundred and thirty-four (334), of whom two hundred and twenty (220) have signed the foregoing agreement.

G. L. SCOTT,
Maj. 10th Cavalry, Acting Indian Agent.

LEECH LAKE AGENCY, MINNESOTA,
March 17, 1902.

And

Whereas it is deemed for the best interests of the said Indians that said agreement be amended and modified as hereafter provided: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said agreement be, and the same is hereby, modified and amended so as to read as follows:

"ARTICLE I. The said Indians belonging on the Red Lake Indian Reservation, Minnesota, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Red Lake Indian Reserva-

tion lying west of the range line between ranges thirty-eight and thirty-nine, west of the fifth principal meridian, the tract of land hereby ceded approximating two hundred and fifty-six thousand one hundred and fifty-two acres, and also hereby agree that all of said Indians now residing on the tract hereby ceded shall remove to the diminished reservation within six months after the ratification of this agreement, and shall be paid not exceeding twenty thousand dollars in cash by the Indians of said Red Lake Reservation out of the first payment received by them from the proceeds of this cession, said twenty thousand dollars, or so much thereof as may be necessary, to be paid equitably to those thus removing, in proportion to the value of their respective improvements, which payment by said Red Lake Indians shall be in full for all improvements which they will abandon, and also for the removal within the diminished reservation of their dead from where they now are buried on the tract hereby ceded.

"ART. II. In consideration of the land ceded, relinquished, and conveyed by Article I of this agreement the United States stipulates and agrees to sell, subject to the homestead laws of the United States, under rules and regulations to be prescribed by the Secretary of the Interior, in tracts not to exceed one hundred and sixty acres to each individual, all of said lands, except lands remaining unsold after five years from the first sale hereunder, which may be sold without reference to the provisions of the homestead law. Said land shall be sold for not less than four dollars per acre, and shall be sold upon the following terms: One-fifth of the purchase price to be paid at the time of sale and the

balance of the purchase price of said land to be paid in five equal annual installments due in one, two, three, four, and five years from date of sale, respectively, and to pay over to said Indians all of the proceeds realized from the sale of the said lands as herein provided.

"ART. III. It is understood that of the amount realized from the sale of said lands a sum of not exceeding three hundred thousand dollars shall be paid in cash per capita, share and share alike, to each man, woman, and child belonging on said Red Lake Indian Reservation within ninety days after the first sale herein provided for, and the remainder of the proceeds of the sale of said lands shall be paid in cash per capita in fifteen annual installments, the first of which fifteen annual installments is to be paid in the month of October of the year following that in which the payment of the said three hundred thousand dollars is made, as provided in this agreement, and in the month of October of each year thereafter, and all moneys received after the expiration of said fifteen years shall be apportioned in like manner among said Indians and paid to them on the first day of October in each year.

"ART. IV. It is further agreed that the said Indians belonging on the said Red Lake Indian Reservation, Minnesota, shall possess their diminished reservation independent of all other bands of the Chippewa tribe of Indians and shall be entitled to allotments theron of one hundred and sixty acres each, of either agricultural or pine land, the different classes of land to be apportioned as equitably as possible among the allottees.

"ART. V. It is understood that nothing in this agreement shall be construed to deprive the said Indians belonging on the Red Lake

Indian Reservation, Minnesota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement. It is the intention of this agreement that the United States shall act as trustee for said Indians to dispose of said land and to expend and pay over the proceeds as received from the sale thereof only as received, as herein provided.

"ART. VI. This agreement shall take effect and be in force when accepted and ratified by the Congress of the United States."

SEC. 2. That said agreement be, and the same is hereby, accepted and ratified as herein amended.

SEC. 3. That the Secretary of the Interior is hereby authorized and directed to sell, subject to the homestead laws of the United States, under such rules and regulations as he may prescribe, in tracts not to exceed one hundred and sixty acres to each individual, all that part of the Red Lake Reservation, in the State of Minnesota, lying westerly of the range line between ranges thirty-eight and thirty-nine west of the fifth principal meridian, approximating two hundred and fifty-six thousand acres. And the said land shall be sold for not less than four dollars per acre, and shall be sold upon the following terms: One-fifth of the price bid therefor to be paid at the time the bid is made, and the balance of the purchase price of said land to be paid in five equal annual installments, due in one, two, three, four, and five years from date of sale, respectively, payment to be made to the receiver of the United States land office for the district in which said land may be situated. And in case any purchaser fails to make such annual payments promptly when due, or within sixty

days thereafter, all rights in and to the land covered by his or her purchase shall at once cease, and any payments made shall thereupon be forfeited and the Secretary of the Interior shall thereupon declare such forfeiture by reoffering said land for sale. And no patent shall issue to the purchaser until the purchaser shall have paid the purchase price and in all respects complied with the terms and provisions of the homestead laws of the United States: *Provided,* That such purchaser shall have the right of commutation as provided by section twenty-three hundred and one of the Revised Statutes of the United States, by paying for the land at the price for which it sold, receiving credit for payments previously made: *Provided further,* That such purchaser shall make his final proof conformable to the homestead laws within six years from the date of sale; that aliens who have declared their intention to become citizens of the United States may become purchasers under this Act, but before making final proof and acquiring title must take out their full naturalization papers; and that persons who may have heretofore exhausted their rights under the homestead law may become purchasers under this Act: *Provided further,* That after the first sale hereunder shall be closed, the lands remaining unsold shall be subject to sale and entry at the price of four dollars per acre by qualified purchasers, subject to the same terms and conditions as herein prescribed as to lands sold at said first sale: *Provided further,* That all lands above described which shall remain unsold at the expiration of five years from the date of the first sale hereunder shall be offered for sale at not less than four dollars per acre (and lands remaining unsold after such sale shall

be subject to private entry and sale at said price), without any conditions whatever except the payment of the purchase price: *And provided further,* That wherever the boundary line of said reservation runs diagonally so as to divide any Government subdivision of a section, and the owner of that portion of such subdivision now being outside of the reservation becomes the purchaser of that portion of such subdivision lying within the reservation, residents and improvements upon either portions of such subdivision as provided by the homestead law shall constitute a compliance as to all such Government subdivisions.

All of the Indians residing upon the tract above described shall remove therefrom to the diminished reservation within six months after the passage of this Act; and there is hereby appropriated from the proceeds of said sale the sum of twenty thousand dollars, or so much thereof as may be necessary, to be paid to those thus removing in proportion to their respective improvements, which payment to the said Red Lake Indians shall be in full for all improvements which they will abandon, and also for the expense of removal within the diminished reservation of their dead from where they are now buried on the tract above described, and the expense of making allotments.

The proceeds of said lands as realized from time to time shall be paid into the United States Treasury to the credit of the Indians belonging on said reservation. Of the amount realized from the sale of said lands a sum not exceeding three hundred thousand dollars shall be paid in cash, per capita, share and share alike, to each man, woman, and child belonging on said Red Lake Indian Reservation, within ninety

days after the first sale herein provided for, and the remainder of the proceeds of the sale of said lands shall be paid in cash, per capita, in fifteen annual installments, the first installment to be paid in the month of October of the year following that in which the payment of the three hundred thousand dollars is made; and all moneys received after the expiration of said fifteen years shall be apportioned in like manner among said Indians and paid to them on the first day of October in each year.

The Secretary of the Interior is hereby vested with full power and authority to make such rules and regulations as to the time of notice, manner of sale, and other matters incident to the carrying out of the provisions of this Act as he may deem necessary, and with authority to continue making sale of said lands until all of said lands shall have been sold.

In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry as now provided by law where the price of the land is one dollar and twenty-five cents per acre.

SEC. 4. That nothing in this Act contained shall in any manner bind the United States to purchase any portion of the land herein described, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received as herein provided.

SEC. 5. That this Act shall take effect and be in force from and after its passage.

U. S. GOVERNMENT PRINTING OFFICE: 1938